

ARTICLE ATTACHED

ON PAGE 61

THE WASHINGTON POST
26 March 1980

Dow Accuses EPA of Air Surveillance

By Peter Behr

Washington Post Staff Writer

Dow Chemical Co. yesterday accused its old adversary, the Environmental Protection Agency, of violating the rules of war by employing satellites, U-2 aircraft, and converted B-26 bombers loaded with high-technology cameras to spy on the company's industrial plants.

The company asked a federal court in Michigan to rule that government airborne surveillance is illegal and unconstitutional, and sought court permission to question officials of the Defense Department, Central Intelligence Agency, and private firms hired by the government to conduct aerial surveys.

Dow also said that EPA officials have acknowledged using photos and other information from the Central Intelligence Agency and other government intelligence units, but refused to discuss this activity, citing national security reasons.

The exchange of photos goes on at an out-of-the-way Army facility called Vint Hill Farms near Warrenton, Va., staffed by retired military photo reconnaissance experts, said Dow.

An EPA spokesman said Dow's "implication of some kind of sinister plot is preposterous. This is an overflight program to detect pollution in waterways and in the air."

The Dow complaint opens a new front in a dispute that began two years ago when the EPA sent a plane to photograph the huge Dow chemical plant in Midland, Mich., after an EPA official was barred from taking pictures within plant grounds. (The issue then was the pollution control measures at the chemical facility's power plant.)

Dow spotted the EPA mission, flown by the Abrams Aerial Survey Corp. from nearby Lansing on Feb. 7, 1978, because Dow had previously hired the same plane for its own aerial surveys, a company spokesman said.

Dow claimed the high-resolution aerial photos could disclose critical industrial processes of value to competitors—who could obtain the photos from the EPA by filing a Freedom of Information Act suit. It got a federal court order requiring EPA to

the photos locked up, and a second order placing them in the court's custody.

But Dow claimed that copies of the photos were still traveling around EPA. When one package of photos arrived, anonymously, from an EPA installation in Las Vegas called the Environmental Monitoring and Support Laboratory, Dow sent its lawyers in hot pursuit.

There they found the remnants of what had been a small EPA "air force" which once included helicopters, light planes, and the converted B-26 bombers, used for aerial detection of pollution problems.

Most of these aircraft are gone now, said Dr. David McNelis, director of EPA's advance monitoring systems division in Las Vegas—the agency now hires private firms to do most of its aerial surveillance.

But the aerial survey work for EPA is substantial, sophisticated, and growing, he said. EPA uses high-resolution photography: digital multispectral scanning which analyses ranges of color differences on the ground undetectable to the human eye; a laser-equipped device for tracking airborne pollution, and infrared photography. But Dr. McNelis denied the photos and data would have any value in industrial espionage as clues to secret industrial processes. "Most of the information we collect is available to anyone with a Brownie and a Piper Cub," he said.

Dow's complaint yesterday also centered on the activities of the EPA National Enforcement Investigation Center in Denver, which aids the agency's crackdown against polluters. Arthur Dybdahl, chief of the unit's remote sensing section, told Dow attorneys last year that EPA had used Air Force and Marine Corps aircraft

to conduct aerial surveys on 50 or 60 occasions in the past nine years. Dow asked the federal court yesterday to stop this practice.

An EPA spokesman said yesterday military aircraft are no longer used.

Dow's interrogation of EPA officials so far has not produced firm evidence of aerial inspections other than the one over Midland two years ago, but the company contended it was sure it was the target of other overflights. The EPA would not comment.

John Connor, an EPA official in the Chicago regional office, said the Dow charge was a public relations smoke screen. EPA and Dow have been at odds on a wide range of issues, from the dispute over the pollution problems from the Midland power plant, to the agency's campaign to ban use of 2, 4, 5-T, a herbicide that was used in the manufacture of Agent Orange, a potent jungle defoliant used in the Vietnam War.

Dow contends that 2, 4, 5-T is safe and has petitioned the government to lift the EPA restriction.

"How does an octopus defend itself," said Connor. "It lets go with a cloud of ink."

In January, EPA charged that Dow's powerplant discharges at the Midland plant violated federal pollution control restrictions.

Most of EPA's aerial survey work does not involve specific industrial plants, but is directed instead at larger-scale environmental problems of water pollution, toxic waste disposal or soil erosion, for example.

But aerial surveillance is an important part of enforcement, officials added. Dow and EPA spokesmen agree the major, unresolved issue raised in the Midland dispute is whether unauthorized aerial surveillance of private industry by government regulators constitutes an unconstitutional search and a violation of a company's legitimate trade secrets.